

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION

CARTER'S, INC.

Employer

and

CASE 7-RC-21554

LOCAL 876, UNITED FOOD AND  
COMMERCIAL WORKERS INTERNATIONAL  
UNION, AFL-CIO

Petitioner

APPEARANCES:

David J. Houston, Attorney, of Lansing, Michigan, for the Employer.  
David Radtke, Attorney, of Southfield, Michigan, for the Petitioner.

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>1</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

---

<sup>1</sup> The parties filed briefs which have been carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Employer, Carter's, Inc., a Michigan corporation, is engaged in the retail sale and distribution of groceries and related products at 21 stores throughout the State of Michigan, one of which is located at 910 Spring Street, Petoskey, Michigan. The Employer's other stores, scattered throughout the Lower Peninsula, are located in Gaylord, Houghton Lake, St. Helen, Tawas, Oscoda, Au Gres, Cheboygan, Onaway, Boyne City, Lake City, Cadillac, Big Rapids, Marshall, Charlotte (two stores), Marysville, St. Clair, Marine City, Kimball and Durand.

The Petitioner seeks to represent only those employees, numbering approximately 115, who work at the Carter's store in Petoskey, Michigan. The Employer contends that the employees of this single store do not constitute an appropriate collective bargaining unit and that the smallest appropriate unit must include the employees of at least five of the Employer's stores, specifically Petoskey, Cheboygan, Onaway, Gaylord and Boyne City. The distance between Petoskey and the four other stores varies from approximately 15 miles to 44 miles, and all are located in the northern tip of the Lower Peninsula.

In addition to the scope of the unit, the parties dispute the eligibility of one classification, "grocery manager," which is currently held by Duane LaMarche. The Employer contends that LaMarche is a supervisor within the meaning of Section 2(11) of the Act, and therefore excluded from the above described unit. To the contrary, the Petitioner asserts that LaMarche is not a statutory supervisor, and therefore should be included in the petitioned-for unit.

The parties agree, however, that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees, including receivers, night stock managers, grocery stock clerks, night stock employees, dairy department managers, dairy clerks, frozen food department managers, frozen food clerks, customer service managers, assistant customer service employees, cashiers, courtesy clerks, retail systems coordinators, retail systems clerks, time and attendance clerks, customer service coordinators,

assistant customer service coordinators, accounting managers, assistant accounting managers, meat department managers, lead meat journeymen, meat journeymen, meat wrappers, meat clerks, produce department managers, lead produce clerks, produce clerks, floral clerks, bakery department managers, lead bakery clerks, bakery clerks, bakers, donut fryers, cake decorators, general merchandise managers, general merchandise clerks, deli department managers, lead deli clerks, deli clerks, liquor clerks, sanitary clerks, bulk foods managers, bulk foods clerks; but excluding unit managers, assistant unit managers, office clerical employees, supervisors and guards as defined in the Act.

The Employer maintains its headquarters or central office in Charlotte, Michigan. The Employer's Charlotte headquarters houses the offices of President Jeff Bazaire, various vice presidents, the human resources department, the employee benefits department, the accounting department, payroll and the advertising staff. The Employer has centralized handling of payroll, employee benefits and policies regarding wages, progressive discipline, award banquets, bonus programs, vacations, holidays and other benefits which are applied uniformly throughout the company. Benefits Manager Louise Bradley handles any benefit-related issues such as insurance claims, 401(k) and workers' compensation through the Charlotte office. Additionally, the Charlotte office gathers and processes time and attendance information from each individual store, and then sends paychecks from the Charlotte office to each individual store.

The accounting functions are also performed at the headquarters office in Charlotte. Each store does its own books, which are sent to the Charlotte office for auditing. Individual stores generally purchase their own products and the bills for such products are paid by the Charlotte office. Moreover, the Employer performs advertising functions, by setting ads and purchasing "ad" products out of the Charlotte office. The Employer has a buyer who negotiates with vendors and purchases "ad" products for all the stores, which products are stored at the Employer's warehouse, and distributed to stores. Additionally, the Charlotte office determines pricing of products, through a pricing coordinator. The Employer has a merchandising staff who are assigned by department to visit particular stores and work directly with department managers and associates on issues such as budgeting, merchandising, hiring needs and training in each of the specialized departments within the store. The Employer has two handbooks in effect entitled "Personnel and Store Operating Procedures" and "Store Operating Procedures." These handbooks are applied uniformly throughout all of the Employer's stores and govern situations such as leaves of absences, work schedules, breaks and overtime, "front end" operations, cash accountability, office procedures, bottle return, sanitation and order processing.

Since October of 1997, the Employer's stores have been divided into three geographic regions, supervised by three different regional directors, who visit each store in their respective regions approximately once per week. The Petoskey store falls under the direction of Tom Scheske, whose region is also comprised of the stores in Gaylord, Houghton Lake, St. Helen,

Tawas, Oscoda and Au Gres. Scheske works out of his home office located in Cheboygan. The two other regional directors are Larry Shoaff and Steve Frees.

The three regional directors are responsible for overseeing the implementation of company policies and programs at each of the stores in their respective regions. Specifically, this involves working with store managers, helping store managers deal with operational issues, and to some extent, working with associates at the stores. For example, the Petoskey store, through its unit manager, Douglas Mann (also known as the general manager) and with the input of Petoskey store department managers, develops a budget for the store, which is submitted to Scheske for informal approval. Scheske and Vice President of Operations Glenn Minton make final budget decisions, with ultimate responsibility resting with Minton. The regional director performs his duties by visiting each of his stores at least once per week, and also through telephone contact with the particular store's unit manager.

Additionally, Scheske has input on certain human resources issues, such as hiring, terminations and disciplines at the store level. Scheske works with associates by obtaining information relating to particular disciplinary situations and then relaying such information to the human resources department. Scheske usually has input in hiring decisions that involve department manager positions, rather than associate positions. Further, it appears that the human resources department is primarily responsible for ultimate decisions concerning employee terminations. A unit manager or regional director may recommend termination for an employee, but it is the human resources director, specifically Marilyn Myers, who makes the final determination on termination after an evaluation of employee rights. Moreover, the human resources department handles job openings and job posting procedures throughout the company.

Despite the centralized nature of the Employer's policies and programs, the day-to-day supervision of employees and direction of work rests with the unit manager and assistant unit manager at each of the Employer's particular stores. In Petoskey, these positions are held by Douglas Mann and Steve McCarry, respectively.<sup>2</sup> The petitioned-for Petoskey store is operational 7 days per week, 24 hours per day. Therefore, Mann, as unit manager, works approximately 50 hours per week, with Mondays and Thursdays being his scheduled day off. Mann further works every other Friday and every fifth Sunday. McCarry, as assistant unit manager, like Mann, works every fifth Sunday and is scheduled off on Tuesdays. Because of the continuous hours, the Petoskey store employs a night stock manager, Tim Rathburn, whose inclusion in the unit has been stipulated to by the parties. Additionally, the Petoskey store employs a grocery manager, Duane LaMarche, who fills in for the unit manager and assistant unit manager during hours when neither Mann or McCarry are present, typically between 5:00 p.m. and 9:00 p.m. LaMarche's inclusion in the proposed bargaining unit is in dispute and will be discussed *infra*. LaMarche works approximately 40 hours per week, taking Wednesdays off and working every fifth Sunday. Accordingly, there are two remaining Sunday day-shifts

---

<sup>2</sup> The parties stipulated, and I find, that these individuals are supervisors as defined in the Act.

covered by two additional individuals, Todd Page, the frozen food manager and Doug Fannin, the dairy manager, both unit positions.

The employees in Petoskey are divided among several departments within the store and there are approximately 35 employees working in the store at any one time during the day up to about 10:00 p.m. to 11:00 p.m. During the night shift, there are approximately 6 or 7 employees working at any one time. The Petoskey store has the following departments: grocery, frozen food, deli, produce, meat, bakery, polar/floral, front end, merchandising, bulk food and retail systems. Each of these departments has a department manager, who is responsible for scheduling employees within that particular department at the Petoskey store. The grocery department is the largest department within the Petoskey store, taking up about 60 percent of the store. Department managers work out of a "communication office," whereas Mann and McCarry have a separate office to which each department manager has a key.

On a daily basis, Mann and McCarry serve in a general oversight capacity for each of the departments within the store. Specifically, Mann reviews and verifies all schedules submitted by department managers. Employees who fall ill call their respective department managers, who will discuss the situation with Mann and obtain his consent over any schedule adjustments. Typically, the department manager will bring in a replacement or cover the job duties. Mann has the final word on awarding employee raises, but reviews written reports from the employee's respective department manager. Mann and McCarry have full authority to issue forms of discipline, such as written and verbal warnings. The department managers have authority to write up or put employees on a "counseling form" only after discussions with and the approval of Mann. However, final authority rests with the human resource department in Charlotte with respect to discharges and suspensions.

Applications for employment, which are uniform company-wide, are obtained at the service counter of the Petoskey store and include space for the applicant's job position preferences. The applications are reviewed by the preferred department managers and Mann, who jointly conduct interviews. Mann and the department managers consult on hiring decisions, with Mann having the ultimate right of refusal to hire. Mann has the responsibility of developing the requisite shift schedules and sole authority to approve overtime and vacation requests, except during high tourism months (late June and July) when vacations are prohibited by the Employer. Mann is also responsible for employee evaluations.

In emergency situations and "re-set" situations, i.e. when shelving needs to be rearranged and redesigned, a department manager may be required to help out at one of the other Carter's stores. There is only one individual, Mr. O'Donnell, a meat department employee, who works in both the Petoskey and Boyne City stores. On a temporary basis, since August 1997, about 16 Petoskey store unit employees have worked at other stores, while about 17 employees from other stores have temporarily worked at the Petoskey store. Further, the Employer maintains a job posting board that includes job openings on a company-wide basis. In the last 15 years, about 14 employees and supervisors from the Petoskey store have been promoted or permanently transferred to positions at other stores or the central office. During

the same period, about 21 employees have permanently transferred into the Petoskey store to both unit and non-unit positions, including Unit Manager Mann.

“There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act only requires that the unit be ‘appropriate.’” *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd.* on other grounds 190 F. 2d 576 (7<sup>th</sup> Cir. 1951). In a representation proceeding the unit sought by the petitioner is always a relevant consideration. *Overnight Transportation Co.*, 322 NLRB 723 (1996); *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994). Accordingly, the issue presented is whether the employees at the Petoskey store constitute *an* appropriate unit. This issue must be resolved with mindfulness of the settled principle that a single facility unit is presumptively appropriate for collective bargaining unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *Courier Dispatch Group*, 311 NLRB 728 (1993); *J & L Plate, Inc.*, 310 NLRB 429 (1993). This presumption has been found specifically applicable to the retail store industry and has been utilized in analyzing the appropriateness of a single-store unit in grocery operations such as the Employer’s. *Foodland of Ravenswood*, 323 NLRB 665 (1997). See, e.g., *Renzetti’s Market*, 238 NLRB 174 (1978); *Bud’s Thrift-T-Wise*, 236 NLRB 1203 (1978); *P & C (Cross Co.)*, 228 NLRB 1443 (1977). The burden is on the Employer to present sufficient evidence to rebut this presumption. *J & L Plate, Inc.*, 310 NLRB 429 (1993); *Red Lobster*, 300 NLRB 908, 910-911 (1990).

The Employer bases its contention that a five-store bargaining unit is appropriate rather than the petitioned-for single store unit on its future growth plans, including the possibility of acquiring three new stores. At the time of the hearing, the Employer had apparently signed a purchase agreement for one of these three stores. As a result of the potential purchases, the Employer speculates that it may add another regional director position, thereby redistributing the stores throughout four, rather than three, regions.<sup>3</sup> Notably, the five stores comprising the Employer’s proposed unit are not currently included in the same region. Furthermore, the Employer admits that its five proposed stores will not necessarily comprise a single region in the event new stores are acquired. At present, Petoskey and Gaylord are in Regional Director Scheske’s region, otherwise known as “Region 3.” The other stores, Cheboygan, Onaway and Boyne City, are included in “Region 2” under the direction of Regional Director Larry Shoaff. One reason advanced by the Employer for this separation of stores is that Scheske’s wife is the unit manager of the Cheboygan store and the Employer does not want Scheske to supervise that store. In further support of its five-store proposal, the Employer states that these five stores, all in the northern region of the Lower Peninsula of Michigan, are unique in that the unit managers communicate with each other more often than the other stores. Additionally,

---

<sup>3</sup> The Employer refused to provide documentation or testimony outlining the specifics of its future plans, claiming that it is bound by confidentiality agreements. Accordingly, there is no record evidence to support the Employer’s contentions that its acquisition of three new stores will cause a change in circumstances thereby rendering its proposed five-store bargaining unit the only appropriate bargaining unit.

another allegedly unique feature of these five stores is that they run what the Employer calls “R.O.P.” ads, although the record is silent as to the meaning or significance of this term.

The evidence presented by the Employer is insufficient to overcome the presumption that the requested single-store unit is appropriate. The Board has recognized that it “is common in retail chain operations, and particularly in food chains [for there to be] a considerable degree of centralized administration in the functioning of . . . stores.” *Foodland of Ravenswood*, 323 NLRB 665, 666 (1997), citing *Angeli’s Super Valu*, 197 NLRB 85, 86 (1972). Accordingly, such a circumstance is not considered a “primary factor” in the consideration of single-store units in this industry. In cases such as this, the Board considers to be more significant whether “the employees in issue perform their day-to-day work under the immediate supervision of one who is involved in rating employees’ performance, or in performing a significant portion of the hiring and firing of the employees, and is personally involved with the daily matters which make up their grievance and routine problems.” *Foodland of Ravenswood*, supra at 666.

Thus, despite the Employer’s showing of administrative centralization, similarity of benefits between the petitioned-for employees and employees of other stores, I find that there exists considerable autonomy retained by the Petoskey store’s management over its employees. See, *RB Associates*, 324 NLRB 874 (1997). Particularly, Mann’s responsibility in matters of hiring employees, scheduling, assigning work, approving overtime, evaluating employees and recommending raises, is significant evidence of local authority, such that centralized control of other matters fails to overcome the presumption of a single-store unit. Furthermore, the lack of significant employee interchange between the Petoskey store and the other four stores proposed by the Employer, the distance between stores and lack of any bargaining history on a larger scale, warrants a finding that the petitioned-for unit is appropriate.

Although the operations of the Petoskey store and the Employer’s 20 or so other stores are integrated to some extent, and the job classifications and employee qualifications are similar, these factors are not sufficient to overcome the single-store unit presumption. Such factors have been accorded little weight in retail situations involving widely separated facilities where employees are subject to direct supervision from a local manager. *Red Lobster*, 300 NLRB 908 (1990). Despite evidence of both temporary and permanent transfers between the various stores, the extent and regularity of such transfers is not so substantial as to negate the appropriateness of the single-store unit in this case. Accordingly, I find that the petitioned-for single-store bargaining unit is appropriate.

In terms of the supervisor status of the grocery manager position, LaMarche has held the position for approximately four and one half years, and has worked at the Petoskey store for seven years. As the grocery manager, LaMarche is in charge of the grocery department, which makes up about 60 percent of the Petoskey store. LaMarche recommends merit raise increases, and schedules and directs the work of the employees in the grocery department, just as other department managers do in their respective departments. As far as direction of work, LaMarche discusses what needs to be done on a daily basis with employees in the grocery

department. However, most tasks are routine. As the grocery manager, LaMarche has recommended early or additional wage rate increases for employees on about six occasions during the last two years, five of which the corporate office awarded. However, there is no evidence in the record to establish that LaMarche's recommendations alone impacted the Employer's wage increase decisions.

In addition to his regular duties, LaMarche works four hours from 5:00 p.m. until 9:00 p.m. on Saturdays, Tuesdays and Thursday when neither Mann nor McCarry are working, but receives the same rate of pay for his work. During these periods, along with his regular grocery management duties, LaMarche conducts periodic checks of the store, especially the front end (i.e. check out), to make sure things are running smoothly. In so doing, if LaMarche observes a customer back-up at the cash registers, he will temporarily pull employees from around the store to help with the customer flow, by asking employees to assist with bagging groceries for short periods of time. Additionally, LaMarche performs bagging functions himself if necessary. Further, if additional employees are warranted for a particular shift, LaMarche will contact the front office, who may then call employees in to work.

In this capacity, LaMarche also makes himself available to answer customer and employee questions. LaMarche, like other department managers, participates in hiring for his department with the unit manager, but there is no evidence that he has hired employees on his own during the absence of Mann and McCarry. Additionally, LaMarche has had no input on employee transfer decisions. Further, LaMarche does not have the authority to issue write-ups, suspensions or terminate employees. Instead, if LaMarche encounters serious employee misconduct while the unit manager and assistant unit manager are absent, he can only send the employee home for the remainder of the shift. Thereafter, the employee is directed to deal with the unit manager after LaMarche makes a verbal report of the incident. LaMarche is not asked for a recommendation concerning further discipline.

LaMarche does not award promotions, but does have some input into the Employer's "20/20" program by commenting to an employee's department manager that the employee has performed well. LaMarche does not fill in for Mann or McCarry during scheduled vacations. Rather, Mann and McCarry fill in for each other in such circumstances. Lastly, LaMarche earns a wage comparable to that of the other department managers, being paid approximately \$1.00 more per hour than most of the department managers. Other department managers also fill in for the unit manager and assistant unit manager in their absence, albeit on a less frequent basis than LaMarche, or during periods when fewer employees are working at the store.

To be found a statutory supervisor, an individual must possess authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action. The exercise of such authority must not be routine, clerical, perfunctory, or sporadic in nature, but requires the use of independent judgment. *Billows Electric Supply*, 311 NLRB 878, 879 (1993); *Bowne of Houston*, 280 NLRB 1222, 1223 (1986). Absent evidence indicating the existence of any one of the primary indicia of



supervisory status indicated above, secondary indicia of such status, such as job titles, better benefits, collecting timecards, and attendance at meetings with management, are not dispositive. *Billows Electric Supply*, supra at fn. 2. The legislative history of Section 2(11) indicates that Congress intended to distinguish between employees commonly referred to as "straw bosses," or leaders, who may give minor orders and oversee the work of others but who are not necessarily perceived as part of management, from those supervisors truly vested with genuine management prerogatives. *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985), enfd. in relevant part 794 F.2d 527 (9<sup>th</sup> Cir. 1986); *George C. Foss Co.*, 270 NLRB 232, 234 (1984). Thus, an individual who exercises some "supervisory authority" only in a routine, clerical or perfunctory manner will not be found to be a supervisor. *Bowne of Houston, Inc.*, supra at 1223. It is well established that the burden of proving supervisory status rests on the party asserting that such status exists. *Clark Machine Corp.*, 308 NLRB 555 (1992).

The Employer has failed to meet its burden of proving that LaMarche, as grocery manager, possesses authority sufficiently distinguishable from the other department managers included in the unit. There is very little record evidence indicating how, and the extent to which, the grocery manager position differs significantly from the other department manager positions with respect to day-to-day duties. Additionally, there are other department managers, specifically Frozen Food Manager Todd Page, Dairy Manager Doug Fannin and Night Stock Manager Tim Rathburn, who like LaMarche, act in the place of both Mann and McCarry for periods of time during store operating hours. The parties have agreed to the inclusion of Page, Fannin and Rathburn in the bargaining unit as non supervisory employees. However, due to the lack of evidence establishing a significant difference between LaMarche and the other three individuals who temporarily fill-in for Mann and McCarry, and the rather higher ratio of employees to supervisors created if LaMarche were not found to be supervisory, I am unable to reach a conclusion as to LaMarche's supervisory status. Consequently, I shall permit Duane LaMarche to vote subject to challenge by any party.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by the Employer at its store located at 910 Spring Street, Petoskey, Michigan, including grocery stock clerks, night stock employees, receivers, night stock managers, dairy department managers, dairy clerks, frozen food department managers, frozen food clerks, customer service managers, assistant customer service employees, cashiers, courtesy clerks, retail systems coordinators, retail systems clerks, time and attendance clerks, customer service coordinators, assistant customer service coordinators, accounting managers, assistant accounting managers, meat department managers, lead meat journeymen, meat journeymen, meat wrappers, meat clerks, produce department managers, lead produce clerks, produce clerks, floral clerks, bakery department managers, lead bakery clerks, bakery clerks, bakers, donut fryers, cake decorators, general merchandise managers, general merchandise clerks, deli department managers, lead deli clerks, deli clerks, liquor clerks, sanitary clerks, bulk foods managers, bulk foods clerks; but excluding unit managers, assistant unit managers, office clerical employees, supervisors and guards as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 20<sup>th</sup> day of May, 1999.

(SEAL)

/s/ William C. Schaub, Jr.  
William C. Schaub, Jr., Regional Director  
National Labor Relations Board  
Seventh Region  
Patrick V. McNamara Federal Building  
477 Michigan Avenue - Room 300  
Detroit, Michigan 48226-2569

440 1700  
440 1760 3600  
177 8500  
177 8520 6200